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APPLICATION NO	FILING DATE	FIRST NAME OF INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
09 701,947	12 05 2000	Elliot Altman	235 00010101	9854

75 70
01 24 2003
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EXAMINER

STEADMAN, DAVID J

ART UNIT	PAPER NUMBER
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1652

DATE MAILED: 01 24 2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.

Applicant(s)

09/701,947

ALTMAN, ELLIOT

Office Action Summary

Examiner

Art Unit

David J. Steadman

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a) in no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133)
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b)

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 61-119 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1 and 61-119 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other:

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DETAILED ACTION

Status of the Application

Claims 1 and 61-119 are pending in the application.

Applicants' amendment to claim 1, cancellation of claims 2-60, and addition of claims 61-119 in Paper No. 9, filed 05/07/01, is acknowledged.

Lack of Unity

1. Lack of unity is required under 35 U.S.C. 121 and 372. This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

- I. Claim(s) 1 and 61-88, drawn to a recombinant method for identifying a bioactive peptide.
- II. Claim(s) 89-97, 104, and 105, drawn to a bioactive peptide comprising a first stabilizing group and a second stabilizing group.
- III. Claim(s) 108-110, drawn to a method for using an antimicrobial peptide comprising a first stabilizing group and a second stabilizing group by contacting a microbe with an antimicrobial peptide.
- IV. Claim(s) 98, 106, and 107, drawn to a bioactive peptide comprising a plurality of sequential uniformly charged amino acids.
- V. Claim(s) 111, drawn to a method for using an antimicrobial peptide comprising a plurality of sequential uniformly charged amino acids by contacting a microbe with an antimicrobial peptide.
- VI. Claim(s) 99-103, drawn to a fusion protein comprising a four-helix bundle
- VII. Claim(s) 112-119, drawn to a method for treating a patient.

2. The inventions listed as Groups I-VII do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical feature for the following reasons:

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- a. The method of Group I does not share any special technical feature with the peptides of Groups II, IV, and VI as the method of Group I does not make or use the peptide of Groups II, IV, or VI.
 - b. The methods of Groups I, III, V, and VII share no special technical feature as the methods comprise different steps, utilize different products and/or yield different results.
 - c. The peptides of Groups II, IV, and VI share no special technical feature as the peptides, by their descriptions, appear to be structurally distinct and where structural identity is required, such as for the production of antibodies, the peptides have different effects.
 - d. The peptides of Groups II, IV, and VI and the methods of Groups III, V, and VII share no special technical feature as methods for using antimicrobial peptides and methods of treating a patient with a peptide drug were well known in the art at the time of the invention and the Groups share no special technical feature as defined by PCT Rule 13.2.
3. If applicant should elect the invention of Group I, this application contains claims directed to the following patentably distinct species of the claimed invention:
- i. the host cell is a prokaryotic cell (claims 62-67 and 73-75).
 - ii. the host cell is a eukaryotic cell (claims 76-79).
4. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1 and 61 generic.
5. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.
6. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an

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allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

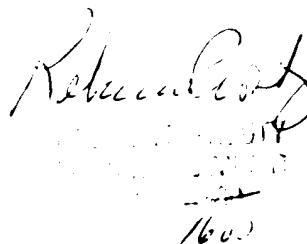
7. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

8. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

9. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Steadman, whose telephone number is (703) 308-3934. The Examiner can normally be reached Monday-Thursday from 6:30 am to 5:00 pm. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Ponnathapura Achutamurthy, can be reached at (703) 308-3804. The FAX number for this Group is (703) 308-4242. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Art Unit receptionist whose telephone number is (703) 308-0196.

David J. Steadman, Ph.D.
Patent Examiner
Art Unit 1652



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